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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 442 of 1981

with

SECOND APPEAL No 443 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA

Versus

RATHOD SHAKER PREMJI

Appearance:

1. Second Appeal No. 442 of 1981

MR BIPIN I MEHTA for appellant

MR DEEPAK M SHAH for respondent

2. Second Appeal No. 443 of 1981

MR BIPIN I MEHTA for appellant

MR DEEPAK M SHAH for respondent

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/10/2001

COMMON C.A.V. JUDGEMENT

Second Appeal Nos.442 of 1981 and 443 of 1981 are filed against the common judgment and order dated 27-3-1982 rendered by the learned District Judge, Jamnagar in Regular Civil Appeal Nos.117 of 1979 and 129 of 1979 whereby the learned Judge, while partly allowing those appeals, set aside the judgment and decree rendered by the learned Jt. Civil Judge (S.D.), Jamnagar, in Regular Civil Suit No.184 of 1975 preferred by the original plaintiff awarding damages and declared the termination of the plaintiff as illegal and he was treated to be in continuous employment.

2. The facts in short are that the present respondent-original plaintiff was in the services of Assistant Garrison Engineer at Jamnagar as Engine Driver Static from 17-3-1971 to 1-3-1973 with certain breaks. Since his services were verbally terminated with effect from 31-3-1973, he preferred a suit being Regular Civil Suit No.184 of 1975. The learned Jt. Civil Judge (S.D.), Jamnagar vide judgment and order dated 31-7-1979 passed the following order:

"The plaintiff's suit is partly allowed.

The plaintiff is entitled to damages for the period from1-3-1973 to 31-12-1973 at the rate of Rs.190-90 Nps.. per month.

The plaintiff do recover Rs.1909/(Rupees One Thousand Nine Hundred Nine only) from the defendant.

Rest of the reliefs so far as reinstatement in service and amount as claimed are concerned, they are negatived.

Each party shall bear its own cost of this suit in exercise of due discretion.

The decree to be drawn accordingly."

2.1 Being aggrieved by the above judgment and decree, both the parties preferred appeals before the District Court at Jamnagar. The appeal preferred by the original plaintiff was numbered as Regular Civil Appeal No.117 of 1979 whereas appeal preferred by the original defendant

was numbered as Regular Civil Appeal No.129 of 1979. The learned District Judge vide common judgment and order dated 27-3-1981 passed the following order:

> "Both the appeals succeed in part and they are hereby partly allowed.
>
> The judgment and decree awarding the damages in sum of Rs.190-90 Nps. and in further sum of Rs.1909/- are hereby set aside and the rest of the dismissal of the suit of the plaintiff is hereby also set aside. The suit of the plaintiff is hereby partly decreed and it is hereby declared that the termination of the services of the plaintiff is illegal and is void and is not binding to the plaintiff and that he continues in the service and he is entitled to the full pay with all the emoluments.
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> There shall be no order as to the cost in respect of the present two appeals because both the appeals have been partly allowed by this court."

2.2 Being aggrieved by the aforesaid judgment and order, both these Second Appeals have been preferred.

2.3 During the pendency of these appeals, original plaintiff i.e. the present respondent has been reinstated into the services vide order dated 14-3-1983 and he has been paid arrears of salary etc. and he is till continuing in the services. Thereafter, original plaintiff was confirmed in the services and was promoted to the next higher post of Peter General Mechanic and thereafter, he was being given his regular promotion. Now his grievance is only regarding non-inclusion of 12 years of his past services which has been established from the detailed affidavit filed by the original plaintiff-present appellant in Second Appeal No.442 of 1981.

3. Heard Mr.B.I.Mehta and Mr.D.M.Shah, learned counsel appearing for the respective parties.

4. Scope of Sec.100 of Civil Procedure Code and power of the High court while exercising jurisdiction as

a Second Appellate Court are by now well demarcated and settled by way of the judgement of Apex Court rendered in Ramaswamy Kalingaryar V. Mathayan Padayachi, AIR 1992 Supp.(1) SCC 712 wherein the Apex Court clearly reiterated the principle that High Court cannot upset the finding of fact recorded by the Lower Appellate Court by reasoning the evidence or reassessing the qualitative value of such evidence on record and thus, cannot reverse the finding of facts under Sec.100 of C.P.C. In fact, the High Court cannot interfere with such finding of fact even by examining or reappreciating the evidence from the aspect of sufficiency of proof. Keeping in mind the above aspect of the matter, I proceed further in the matter.

5. Learned counsel for the respective parties have taken me through the reasoned judgments and orders passed by both the Courts i.e. the Trial Court and Lower Appellate Court. It is established from these judgments and orders as well as from the record and proceedings more particularly Exs.46, 254 and 63 that various appointment orders were being issued by the appellant department and it appears that the respondent had been engaged continuously as an Engineer Driver right from 16-3-1971 to 1-4-1973 by passing various appointment orders (for 89 days) by showing artificial breaks. However, facts remain that the respondent was in continuous employment and, therefore, the manner in which the appointment orders are being issued is arbitrary and even the verbal order of termination is also arbitrary. Hence, Court below has rightly reinstated him with full back wages. Lower Appellate Court has relied upon various judgments and it is not necessary to repeat the same at this stage and I do not see any reason to interfere with the same. Reliance is placed on the unreported judgment of this Court in the case of Ghanshyam M.Pandya Vs. State of Gujarat, 1985 G.L.H. (U.J.) 51. No other convincing legal submissions were made by the learned counsel for the Union of India. The point which he has tried to advance before this Court is the question of limitation. I am of the view that same has been rightly dealt with by the Trial Court by replying issue No.1 by holding that the suit is not barred by law of limitation and said point has not been taken in the Lower Appellate Court. Hence, I do not deal with the same in this Second Appeals.

6. In view of what has been stated hereinabove, I am of the opinion that order passed treating the respondent to be in continuous employment and paying him the full back wages does not require any interference in these

Second Appeals.

7. Thus, Second Appeal No.442 of 1981 is dismissed. The respondent is treated to be in continuous employment of the appellant and he will be entitled to all the benefits.

8. In view of the dismissal of Second Appeal No.442 of 1981, Second Appeal No.443 of 1981 which is filed against granting of consequential benefits, is also dismissed.

(R.P.DHOLAKIA,J.)
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